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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,565	08/28/2001	Dirk Lenz	Beiersdorf 738-KGB	5014

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/940,565	LENZ, DIRK	
	Examiner	Art Unit	
	Christopher C Pratt	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 7, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, 8-10, drawn to a fabric laminate, classified in class 442, subclass 382.
 - II. Claim 7, drawn to a process for producing a fabric laminate, classified in class 156, subclass various.
 - III. Claims 11-12, drawn to a method of using a fabric laminate, classified in class 604, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be produced by another method comprising spacing the weld points apart in only the transverse direction.
3. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a different process comprising covering a car.

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4. Inventions II and III are related as process of making and process of using the product. The use as claimed can be practiced with a materially different product. Since the product is not allowable, restriction is proper between said method of making and method of using. (MPEP § 806.05(i)).

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Kurt Brisco on 6/26/03 a provisional election was made with traverse to prosecute the invention of group I, claims 1-6 and 8-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7 and 11-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

DETAILED ACTION

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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8. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Gessner et al (5997989).

Gessner is concerned with the creation of a wound dressing (col. 11, lines 16-17) comprising an outer spunbond layer and a staple fiber nonwoven (abstract and col. 8, line 26). The layers are bonded together by ultrasonic welding (col. 9, lines 56-58).

Gessner teaches doping with surface-active agents (col. 9, lines 35-36).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4, 6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gessner et al (5997989).

Gessner teaches the spunbond nonwoven fabric to be polypropylene, but does not seem to explicitly teach the composition of the staple fibers. It would have been obvious to a person having ordinary skill in the art to utilize polypropylene for the staple fibers. Such a choice would have been motivated by the desire to simplify production by using materials already on-hand.

Gessner seems to be silent with respect to the basis weights of the fabrics. It would have been obvious to a person having ordinary skill in the art to utilize applicant's claimed weight ranges. The skilled artisan would have been motivated to vary the basis

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weights of the fabrics by the desire to render the bandage suitable for a variety of end use applications.

With respect to claim 4, Gessner teaches that there may be more than two plies (col. 4, line 4 and col. 8, lines 57-58), but fails to explicitly teach five plies of staple fibers. Based on Gessner's suggestion to use more than two plies, it would have been obvious to a person having ordinary skill in the art to utilize five plies of the staple fiber fabric. Such a modification would have been motivated by the desire to increase the absorbent capacity of the bandage.

With respect to claim 6, Gessner teaches adding additional fibers to the spunbond layer (col. 8, lines 10-15). Gessner teaches adding polyamide fibers, but does not specifically teach the addition of high strength polyamide fibers, such as aramid. It would have been obvious to a person having ordinary skill in the art to utilize aramid fibers as the polyamide addition taught by Gessner. Such a modification would have been motivated by the desire to increase the strength of the fabric and increase its flame retardant properties.

With respect to claim 8, Gessner teaches a spunbond layer attached to a film (col. 8, lines 26-28). Gessner does not teach the film to be perforated; however, it would have been obvious to a person having ordinary skill in the art to perforate the film of Gessner. Such a modification would have been motivated by the desire to render the film fluid or vapor permeable in order to increase the comfort to the wearer.

Gessner teaches the film to be composed of "polyethylene and the like," but does not explicitly teach polypropylene. It would have been obvious to the skilled artisan to

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utilize polypropylene in place of polyethylene. The skilled artisan would have been motivated to utilize polypropylene because it is a functionally equivalent polymer of polyethylene and it would reduce the difficulty of manufacturing by using a material already on hand.


Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Delmore teaches a bandage comprising a combination of nonwoven materials. Brown teaches the advantages of using ultrasonic bonding over other bonding methods.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER

Christopher C. Pratt
July 16, 2003